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2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X
5 YEMISI AKINYEMI,

6

PLAINTIFF,

7

8 -against-

Case No.
07 CV 4048

9

10 MICHAEL CHERTOFF, SECRETARY, DEPARTMENT OF
11 HOMELAND SECURITY,

12

DEFENDANTS.

13 -----X

14

15

16

DATE: October 4, 2007

17

TIME: 10:04 a.m.

18

19 EXAMINATION BEFORE TRIAL of the
20 Defendant, DEPARTMENT OF HOMELAND SECURITY,
21 by a Witness, SUSAN MITCHELL, taken by the
22 Plaintiff, pursuant to a Court Order, held
23 at the law offices of K.C. Okoli, Esq., 330
24 Seventh Avenue, 15th floor, New York, New
25 York 10001, before Lieng Boua, a Registered
Professional Reporter and Notary Public of
the State of New York.

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1 MITCHELL

2 A. The EEO program manager.

3 Q. Are you aware that Ms. Akinyemi
4 filed a formal charge with the EEOC?

5 A. Yes, I am.

6 Q. Do you know that an investigative
7 file was generated as a result of that charge?

8 A. I don't know. I've never seen
9 one, but.

10 Q. As you sit here, you've never seen
11 one?

12 A. An investigative file for EEOC,
13 no, I never saw an investigative file.

14 Q. Did you see an investigative file
15 generated by the U.S. Customs and Border
16 Protection?

17 MR. CLOPPER: Objection,
18 ambiguous. Are we speaking of
19 Ms. Akinyemi or Ms. Haq?

20 MR. OKOLI: Ms. Akinyemi.

21 A. Again, I guess -- can I ask a
22 clarifying question? Are we talking about the
23 discipline file or the EEOC file?

24 Q. I'm talking, are you aware of any
25 investigation that was conducted by the

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2 that found the weapon made a report of it to
3 their supervisor?

4 A. I did find out about that.

5 Q. What did you find out is what I am
6 asking? Did you then find out that the person
7 who found the weapon actually reported it?

8 A. I found that they did not, for
9 several months, report it.

10 Q. The people who found it did not
11 report it for several months?

12 A. Correct.

13 Q. Did you learn when they then
14 reported it?

15 A. Several months later.

16 Q. But how many months before
17 Ms. Akinyemi's issue came up?

18 A. I don't know the exact time line
19 but it was before Ms. Akinyemi's issue came up
20 that they reported it to a supervisor.

21 Q. Did you find out from them why it
22 took several months for them to report it at
23 the time that they did?

24 A. I did find out.

25 Q. What did you find out?

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2 A. They decided to take care of it
3 themselves.

4 Q. What are the names of these people
5 who decided to take care of it themselves?

6 A. CBPO Wescott.

7 Q. Wescott, can you spell that?

8 A. W-e-s-c-o-t-t.

9 Q. Okay.

10 A. And there's another individual
11 whose name is escaping me right now.

12 Q. Is that individual's name a
13 female?

14 A. Male.

15

16 Q. We will leave a space in the
17 transcript so you can provide the name of that
18 person.

19 MR. CLOPPER: She is answering
20 that she does not know, but we will
21 respond to it in an appropriate discovery
22 request for that information.

23 MR. OKOLI: She said the name is
24 escaping her.

25 Can you read back the answer?

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2 result of her investigation?

3 A. I was advised that the case was
4 closed.

5 Q. Did you ask her why the case was
6 closed?

7 A. No, I did not.

8 Q. Did she tell you?

9 A. I believe it was handled at her
10 level, handled at the level below me.

11 Q. But the question is this: She did
12 not take action of her own volition? You
13 instructed her to take action to look into the
14 matter?

15 A. To look into the matter, yes.

16 Q. And you didn't ask her whether or
17 not the matter you asked her to look into was
18 proven or not proven?

19 A. She told me it was taken care of,
20 that it had been reviewed.

21 Q. Did you understand that it was not
22 established or that it was established? What
23 was your understanding?

24 A. My understanding was that an
25 incident did occur and it was handled at a

1 MITCHELL

2 level lower than myself.

3 Q. Your understanding was that an
4 incident occurred?

5 A. Correct.

6 Q. What did you understand occurred?
7 What incident, quote-unquote, did you
8 understand occurred?

9 A. I never got a copy of the case
10 file because I was advised that any actions
11 that needed to be taken were already handled
12 below me.

13 Q. And the person who handled it
14 below you is somebody you supervised; correct?

15 A. Yes.

16 Q. When you say it was handled, what
17 specifically do you mean?

18 A. I was advised by my senior manager
19 that it was handled.

20 Q. Okay. And did you get the sense
21 of whether or not Ms. Gluba was disciplined
22 for it or not?

23 A. I got the sense that there was
24 discipline taken.

25 Q. What discipline did you learn was

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2 she told you she has no knowledge of
3 Ms. Gluba's discipline.

4 MR. OKOLI: Okay.

5 MR. CLOPPER: There's documents
6 that bear on this issue. I am not quite
7 sure where we are going with this.

8 Q. Just to be clear, you asked
9 Ms. Haage to look into the allegation that
10 Ms. Gluba had revealed sensitive government
11 information; correct?

12 A. Correct.

13 Q. And you never found out
14 specifically from Ms. Haage what her
15 conclusion was as a result of the
16 investigation?

17 A. I didn't say that.

18 Q. Did you find out from Ms. Haage
19 what she found as a result of her
20 investigation?

21 A. Yes, I did.

22 Q. What did she tell you she found?

23 A. That sensitive information was not
24 revealed to members of the traveling public.

25 Q. Did you say that some discipline

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2 her probation?

3 A. It would have to be case specific.
4 Perhaps, perhaps not. It is dependent on the
5 circumstances of the case.

6 Q. Thank you. Is Ms. Gluba still on
7 probation?

8 A. No.

9 Q. By the way, what is Kathleen
10 Haage's race?

11 A. She is white.

12 Q. Do you know Ms. Gluba's current
13 title?

14 A. CBPO.

15 Q. Just to be clear, you did not
16 become aware of the claim or allegation that
17 Ms. Gluba had revealed sensitive information
18 to the public until my client raised it in the
19 course of the investigation of her claim.
20 Correct?

21 A. Correct.

22 Q. Now, you said Ms. Haage did this
23 investigation and told you it was handled at
24 her level. Correct?

25 A. Correct.

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2 MR. OKOLI: Okay. Even though I
3 will put it in writing, I want to have
4 every memoranda relating to Ms. Haage's
5 investigation of Ms. Gluba's situation or
6 the investigation by anyone else at
7 Customs relating to the allegation of
8 Ms. Gluba revealing sensitive
9 information.

10 Q. Do you know an employee by the
11 name of Elba Mendez?

12 A. Not personally.

13 Q. Do you know of Elba Mendez?

14 A. Yes.

15 Q. How did you come to know of her?

16 A. Your client's allegations.

17 Q. And what did you learn were my
18 client's allegations against Ms. Mendez?

19 A. I believe that Ms. Mendez had been
20 involved in a similar situation.

21 Q. When you say "similar situation,"
22 would you be more specific to the best that
23 you recall?

24 A. I believe the allegation was that
25 she also met family members arriving on a

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2 flight.

3 Q. At a gate area?

4 A. I don't know that that was part of
5 the allegation.

6 Q. As a result of that allegation,
7 did you take any steps?

8 A. I referred the allegations to the
9 area director.

10 Q. And who would the area director be
11 in that case?

12 A. Kathleen Haage.

13 Q. Do you recall when it was that you
14 referred the allegation to the area director?

15 A. That day or the next day when
16 Mr. Angevine gave me the list of allegations.
17 It was the exact same time.

18 Q. When you referred this allegation
19 to Ms. Haage, did you do that by memo or was
20 it just verbal?

21 A. Verbal.

22 Q. Did you give her any documents in
23 connection with the verbal instruction that
24 you gave her?

25 A. No.

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2 in connection with investigating the
3 underlining complaints or allegations by my
4 client were done verbally?

5 A. Yes.

6 Q. Okay. So in relation to that of
7 Mr. Murphy, it was also a verbal reference to
8 Ms. Haage to investigate it?

9 A. Correct.

10 Q. And did Ms. Haage come back to you
11 to tell you the results of the investigation?

12 A. No. I did not hear anything about
13 it.

14 Q. How soon after you learned of the
15 allegation did you make this reference to
16 Ms. Haage to investigate Mr. Murphy's
17 situation?

18 A. As I said before, all the
19 allegations were made to me by Mr. Angevine at
20 the same time and they were all referred to
21 Ms. Haage at the same time.

22 Q. Where is Ms. Haage now?

23 A. Retired.

24 Q. So from the time that you referred
25 these three allegations to Ms. Haage until her

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2 for identification?

3 (Whereupon, the aforementioned
4 documents were marked as Plaintiff's
5 Exhibit 2 for identification as of this
6 date by the Reporter.)

7 MR. CLOPPER: Let us take a
8 five-minute break, Mr. Okoli.

9 MR. OKOLI: Sure.

10 (Whereupon, a recess was taken.)

11 MR. OKOLI: Okay. Just mark all
12 of these as well.

13 (Whereupon, the aforementioned
14 documents were marked as Plaintiff's
15 Exhibits 3 through 11 for identification
16 as of this date by the Reporter.)

17 Q. Now, I am placing before you what
18 has been marked as Plaintiff's Exhibit 2. Do
19 you recognize what it is?

20 A. Yes, I do.

21 Q. What is it?

22 A. It is the notice of termination to
23 Ms. Akinyemi.

24 Q. And did you sign it on the second
25 page of it?

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2 A. Yes, I did.

3 Q. That is your signature?

4 A. Yes, it is.

5 Q. In the last full paragraph, I
6 believe the third sentence --

7 MR. CLOPPER: On the second page?

8 MR. OKOLI: On the first page.

9 MR. CLOPPER: I am sorry.

10 Q. (Continued) It says: "These
11 policies are detailed in the standard of
12 conduct, Section 6.3.5. Your misuse of
13 position and authority jeopardized and
14 tarnished how the public views CBP and its
15 employees."

16 Do you see that?

17 A. Yes, I do.

18 Q. Could you give us the facts on
19 which you based the conclusion that the misuse
20 of position and authority jeopardized and
21 tarnished how the public views CBP and its
22 employees?

23 A. In this case?

24 Q. Yes.

25 A. Sure. Based on the statements

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2 that I read and the details of the incident,
3 Ms. Akinyemi used her position and bypassed
4 TSA screening in full view of the traveling
5 public and entered an area that only traveling
6 members of the traveling public, ticketed
7 passengers or authorized employees on official
8 business are allowed to be in. That was done
9 in the full view of the public.

10 Q. Did you speak with any members of
11 the public regarding whatever it is that
12 happened at the airport on that day?

13 A. No.

14 Q. In any of the documents you read
15 in which you based your decision, did any of
16 those people -- Mr. Herter or the two
17 officers -- tell you that they spoke with any
18 members of the public regarding what
19 Ms. Akinyemi was alleged to have done?

20 A. There was a conversation, I
21 believe, one of the statements mentioned, a
22 conversation with an airline employee.

23 Q. What was that conversation? What
24 did the airline employee say in the
25 conversation?

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2 A. I don't have the statement in
3 front of me.

4 Q. In whose statement was that?

5 A. One of the two officers, I
6 believe, that were there the night of the
7 incident.

8 Q. Was it Alelong or Jozeck
9 (phonetic)?

10 A. I don't know.

11 Q. Is it your recollection that that
12 airline employee expressed an opinion as to
13 what Ms. Akinyemi did at the airport?

14 A. I don't recall. I just --

15 MR. CLOPPER: Objection. I mean
16 to the extent you are suggesting that
17 that is what she said. That is not an
18 accurate quotation or reflection of her
19 testimony.

20 MR. OKOLI: No. I am asking the
21 question because I am interested in the
22 portion that says jeopardized and
23 tarnished how the public views CBP and
24 its employees.

25 She said she didn't speak to any

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2 members of the public. With the
3 exception of this possible airline
4 employee, the statements that she is
5 referring to did not say the traveling
6 members of the public either. I want to
7 know the basis for this statement.

8 MR. CLOPPER: Okay.

9 Q. In the first full paragraph of
10 page 2 beginning with furthermore, it says:
11 "Furthermore, in order to accomplish its
12 mission, CBP must be able to trust and depend
13 on its employees to conduct themselves in an
14 appropriate manner at all times."

15 Do you see that?

16 A. Yes, I do.

17 Q. What mission of CBP were you
18 referring to in that paragraph?

19 A. Are you asking me what is CBP's
20 mission?

21 Q. No. What mission are you
22 referring to here? What mission of CBP were
23 you referring to when you said "in order to
24 accomplish its mission"?

25 A. That actually means the entire

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2 mission of CBP. The mission of CBP is to
3 detect and deter terrorists and terrorist
4 weapons from entering and to enforce the laws
5 of the United States, to interdict
6 contrabands, narcotics, agriculture products,
7 and to facilitate legitimate trade and travel.
8 That is the mission of CBP.

9 Q. What specifically did Ms. Akinyemi
10 do on that day that you considered an anathema
11 to the accomplishment of the mission of CBP?

12 A. Well, I believe the misuse of
13 position to gain access to an area where the
14 normal public cannot is an anathema to that
15 mission. If the mission is to protect and
16 defend the country, not to bypass security,
17 the very security that was set up, she used
18 the trappings of her office to bypass.

19 Q. You do not believe that she was
20 acting as a terrorist though; did you?

21 A. I believe she bypassed security
22 and used her position to -- the trappings of
23 her office to do that.

24 Q. Do you think that by her,
25 Ms. Akinyemi, doing that, that would encourage

1 MITCHELL

2 terrorism?

3 A. No. I think it is an anathema to
4 our mission.

5 Q. What specific mission?

6 A. The mission is to protect and
7 defend the border and she undermined that
8 position by misuse of her position.

9 Q. In what way was the border
10 unprotected by her getting into the restricted
11 area to see her husband off?

12 MR. CLOPPER: Objection. That
13 mischaracterizes the witness' testimony.

14 Q. I am asking, in what way do you
15 believe that Ms. Akinyemi going into the
16 restricted area as a customs officer
17 undermines the mission of Customs to protect
18 the citizens?

19 A. She did not. She did not do this
20 as a customs officer. Therein lies the
21 problem. She used the trappings of the
22 customs office to do that. She was not acting
23 as a customs officer when she did that.

24 Q. Was she employed by Customs as of
25 the time she was doing that?

1 MITCHELL

2 A. Oh, absolutely. They are being
3 paid. They are on duty.

4 Q. As you sit here today, do you know
5 whether any customs employees have ever
6 accessed a restricted area and were not
7 terminated for that?

8 A. In the course of their business,
9 they access restricted areas every day.

10 Q. I am talking about those not on
11 duty, a customs officer not on duty gaining
12 access to a restricted area and not being
13 fired?

14 A. I --

15 MR. CLOPPER: Objection. It is
16 ambiguous.

17 MR. OKOLI: Well, let me rephrase
18 it.

19 MR. CLOPPER: Yes.

20 Q. As you sit here today, are you
21 aware of any instances in which a customs
22 officer not on duty accessed a restricted area
23 and yet was not fired?

24 A. Yes. I do have personal knowledge
25 of an incident like that.

1 MITCHELL

2 Q. How many such incidents are you
3 aware of?

4 A. I have personal knowledge of one
5 specific incident.

6 Q. What is that incident that you are
7 aware of?

8 A. It was an employee who was not on
9 duty and bypassed security and accessed a
10 restricted area at Newark Airport.

11 Q. Do you know the name of this
12 employee?

13 A. Jill Von Wolkenn.

14 Q. Could you spell that?

15 A. J-i-l-l, next name V-o-n, next
16 name W-o-l-k-e-n-n.

17 Q. That is a female, Jill? You said
18 Jill?

19 A. Yes.

20 Q. That is a female?

21 A. Yes, it is.

22 Q. When did this occur?

23 A. Several years ago at Newark
24 Airport.

25 Q. When you say "several years ago,"

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2 less than five years ago, more than five years
3 ago?

4 A. Less than five years ago.

5 Q. What was the outcome of that?

6 A. She was disciplined.

7 Q. What discipline was imposed on
8 her?

9 A. There were several charges
10 involved, and I believe it was a proposed
11 14-day suspension.

12 Q. Did you say there were several
13 charges?

14 A. Correct.

15 Q. In addition to accessing a
16 restricted area, she did other things that
17 were considered inappropriate by Customs? Is
18 that what you are saying?

19 A. Correct.

20 Q. How many additional things? I
21 mean two more or three more in addition to --

22 A. She also argued with the security
23 company and she used the agency letterhead
24 inappropriately.

25 Q. When you say she used the agency

1 MITCHELL

2 letterhead, what did she do?

3 A. (No response.)

4 Q. What is your recollection of what
5 she did with it?

6 A. She wrote a letter of complaint to
7 the Port Authority police.

8 Q. With the agency letterhead?

9 A. Correct.

10 Q. And this got her 14 days
11 suspension?

12 A. That was her proposal.

13 Q. And what was the final outcome?

14 A. There was a five-day suspension.

15 Q. So for these offenses, she got a
16 total of five days suspension?

17 A. That was the decision, yes.

18 Q. At the time, were you the director
19 of field operations?

20 A. Yes, I was.

21 Q. And what is Jill Von Wolkenn's
22 race?

23 A. She is white.

24 Q. Do you know her national origin?

25 A. No, I don't.

1 MITCHELL

2 she employed by U.S. Customs?

3 A. No, she was not. She was employed
4 by INS.

5 Q. I see, okay. Did you say she
6 used -- pardon me if I asked this. What
7 letterhead did you say she used?

8 A. At the time of the incident, she
9 used the INS letterhead.

10 Q. Okay.

11 A. But the agency letterhead is the
12 wording I used.

13 Q. Do you know whether she was a
14 permanent employee or a probationary employee
15 at the time?

16 A. She was a permanent employee not
17 in uniform.

18 Q. Now, back to Plaintiff's Exhibit
19 11, do you recognize what that is?

20 A. Yes, I do.

21 Q. Did you provide that unsworn
22 declaration?

23 A. Yes, I did.

24 Q. Is that your signature on page 139
25 at the bottom?

1 MITCHELL

2 MR. OKOLI: Yes.

3 Q. As you sit here today --

4 A. I am returning Exhibit 10.

5 (Witness handing.)

6 Q. As you sit here today, are you
7 aware or have you ever heard that customs
8 employees were profiling Nigerian passengers
9 at the airports whether or not it is true?

10 Have you ever heard that whether
11 it is true or something that is not true?
12 Have you ever heard about that suggestion,
13 complaint, or allegation that customs officers
14 were targeting Nigerian passengers for
15 profiling?

16 MR. CLOPPER: By any person at any
17 time?

18 MR. OKOLI: Yes.

19 Q. At the airports since you became
20 director of fields operations?

21 A. Since 2002 and I must ask you
22 which word you actually want to use because
23 you used two different words?

24 Q. Let me --

25 A. One time, you said "profiling" and

1 MITCHELL

2 another time you said "targeting."

3 Q. Sorry, let me rephrase it. Since
4 you became the director of field operations,
5 have you heard any allegations, whether it is
6 true or false, that customs officers were
7 profiling Nigerian airline passengers?

8 A. Since 2002, I have not heard
9 anyone make a claim of profiling Nigerian
10 passengers by Customs.

11 Q. When did you first become a
12 director of field operations?

13 A. In July 2002.

14 Q. Since 2002, have you ever heard of
15 any allegation that customs officers were
16 targeting Nigerian passengers?

17 A. Since 2002, I have not heard
18 anyone claiming Nigerian passengers have been
19 targeted. I have not heard that personally.

20 MR. CLOPPER: I will object. If
21 you could, clarify whether you are
22 talking about passengers on Nigerian
23 planes bound to and from Nigeria or
24 Nigerian citizens or nationals?

25 MR. OKOLI: Passengers. I said

1 MITCHELL

2 passengers, Nigerian passengers.

3 A. I stand by my statement. I have
4 not heard anyone claiming the targeting of
5 Nigerian passengers since 2002.

6 Q. Had you ever heard that prior to
7 2002?

8 A. Yes.

9 Q. Where did you hear it from?

10 A. There have been many claims of
11 profiling by many nationalities and Nigerians
12 did claim that there were claims of profiling
13 by the U.S. Customs Service of Nigerian
14 passengers.

15 Q. From what you recall, who claimed
16 that Nigerian passengers were being profiled?

17 A. The press usually.

18 Q. I'm sorry?

19 A. The press.

20 Q. So it was in the press that you
21 heard it or you saw it?

22 A. Uh-huh, yes.

23 Q. Are you aware whether or not it's
24 factually correct, since 2002, of a perception
25 that Nigerians were being profiled, Nigerian

1 MITCHELL

2 passengers were being profiled?

3 MR. CLOPPER: Again, I object.

4 Maybe this is my misunderstanding, but I
5 don't know if we are talking about people
6 who are on Nigerian planes who may be
7 from anyplace in the world or who are
8 ethnically Nigerians?

9 MR. OKOLI: We are talking of
10 people who are either ethnically Nigerian
11 on other planes or people going or coming
12 from Nigeria who are dark-skinned. That
13 is what we are talking about.

14 I am not talking about a Nigerian
15 American diplomat living in or traveling
16 to Nigeria, a white American diplomat or
17 a worker of IBM. That is not what I am
18 talking about or oil workers. I am
19 talking of a dark-skinned negroid.

20 A. We have many complaints from many
21 passengers from many flights that are claiming
22 that they are being profiled.

23 Q. Sorry, but I'm not asking you
24 about complaints of other people. My question
25 is very, very clear. It is yes or no. I am

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2 not interested in profiling of Polish people,
3 Bulgarians. All that I am interested in is
4 Nigerian passengers. If it is not for
5 Nigerian passengers, I will be glad to take
6 the answer no.

7 MR. CLOPPER: Repeat the
8 question.

9 MR. OKOLI: My question does not
10 relate to anyone else. It is about
11 Nigerians, so I will ask you to instruct
12 your client to be responsive to that. If
13 she doesn't know, she doesn't know.

14 Q. Are you aware of any perception
15 that ethnic Nigerians or Nigerian passengers,
16 whether traveling out of the United States or
17 coming into the United States, are being
18 profiled or targeted for different treatment
19 by CBP or U.S. Customs?

20 MR. CLOPPER: Objection. At this
21 time?

22 MR. OKOLI: Has she ever?

23 MR. CLOPPER: Ever?

24 MR. OKOLI: Yes, of that
25 perception I am talking about.

1 MITCHELL

2 A. I don't know what people's
3 perceptions are.

4 Q. Okay. Did you ever hear any
5 rumors, not in the press, from the workplace?

6 A. So now is your question employees?

7 Q. Employees.

8 A. I have never heard employees say
9 that we are profiling Nigerians or passengers
10 on Nigerian planes.

11 Q. Now, I will ask a slightly
12 different question. Since Ms. Akinyemi's
13 case, have you learned, maybe third-hand or
14 fourth-hand, learned that a customs employee
15 thought that Nigerian passengers were being
16 profiled?

17 A. I have never learned that a
18 customs employee thought that Nigerian
19 passengers were being profiled.

20 Q. Okay. If they were being
21 profiled, would you see anything wrong with
22 that?

23 A. We don't profile passengers at
24 all.

25 Q. I am just asking. If they were,

1 MITCHELL

2 would you find anything wrong with that?

3 A. Yes. I don't believe profiling is
4 an effective law enforcement tool.

5 Q. As the director of field
6 operations, are you aware of any policies in
7 place regarding drug trafficking that are
8 applied differently to Nigerians than they are
9 applied to others?

10 A. I don't know of any policy that
11 applies to one nationality versus another.

12 Q. So as you sit here today, you do
13 not know whether Nigerians have ever been
14 profiled by customs officers within your area
15 of command based on the perception of
16 trafficking and drugs?

17 A. I don't know of any of my
18 employees that ever profiled anyone. I do
19 believe that flights from Nigeria have been
20 targeted, but it is the country as opposed to
21 the people.

22 Q. What is the distinction between
23 the country and the people?

24 A. We have a variety of countries of
25 interest, whether for terrorism or for

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1
2 narcotics. Anyone coming from that country
3 could be questioned for those reasons, not
4 necessarily the people, the nationality.

5 It is the country where the flight
6 is coming from, where the passenger is coming
7 from, not where the passenger was born, that
8 is of interest for a law enforcement
9 perspective.

10 Q. When you say "the country where
11 the flight is coming from," as a matter of
12 common sense, would you expect more people on
13 that flight be citizens of that country than
14 non-citizens?

15 A. That would be the norm.

16 Q. So if you were targeting a flight
17 coming from Nigeria, you would expect the
18 majority of the people flying on that plane to
19 be Nigerian citizens?

20 A. Correct, but they may not be the
21 ones of interest to us. In fact, it may be
22 the non-Nigerians that is of more interest to
23 us from a law enforcement perspective.

24 Q. Do you have any documentation of
25 the people that you have interdicted or

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2 challenged as persons of interest coming on
3 flights from Nigeria? Do you have any such
4 documents?

5 A. Every passenger coming through has
6 to go through a clearance process, so I could
7 tell you every passenger has been talked to
8 and has been examined for CBP.

9 Q. That is not my question. When you
10 talk about targeting, what does targeting mean
11 to you? Explain that to us when you say
12 certain countries, flights from certain
13 countries are targeted. Explain that to us.
14 What does that mean?

15 A. Certain countries might be --
16 depending on the particular area of interest,
17 certain flights coming from certain countries
18 might have more interest and so I would expect
19 that resources would be more dedicated to
20 looking and determining the threat of those
21 individual passengers in that flight.

22 Q. When you say certain flights
23 coming from certain countries have more
24 interest, what is that in plain speak?

25 A. It could be for terrorism. We

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2

have a variety of flights that are of interest

3

for that. For narcotics, we have flights of

4

interest. For agriculture, we have flights of

5

interest for those various items.

6

Q. Could you name the flights of

7

interest in relation to narcotics that you are

8

aware of since you became director of field

9

operations?

10

MR. CLOPPER: Objection. I think

11

we need to take a break. I need to --

12

MR. OKOLI: Not while a question

13

is pending on the record and the fact

14

that counsel is asking for a break --

15

MR. CLOPPER: Sure. I am

16

concerned about a privilege issue here.

17

Do you think you can answer that

18

question without violating a privilege,

19

including law enforcement privilege?

20

THE WITNESS: That is law

21

enforcement sensitive information.

22

MR. CLOPPER: I am with National

23

Security. I am instructing my client not

24

to answer.

25

Q. But you do admit that there are

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2 flights coming from certain countries that
3 Customs targets?

4 A. Correct, we do have targets.

5 Q. Okay. And some of the targets are
6 based on the perception that those flights are
7 likely to have drug traffickers?

8 A. I would not use the word
9 "perception."

10 Q. In terms of drugs, what would
11 cause you to have specific interest in flights
12 coming from a certain country, whatever that
13 country is?

14 A. It could be the region of the
15 world that it is. It could be specific
16 information. It could be general information
17 in the intelligence community. It could be
18 past history of successful interdiction.
19 There's a variety of reasons that together
20 could form the basis for a risk assessment.

21 Q. So if a customs officer were to
22 say that they targeted Nigerians because of
23 their possible drug involvement, that would be
24 incorrect?

25 A. I would think that it would be

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2 incorrect to target Nigerians.

3 Q. No, no, no. I am --

4 A. That is the question you asked
5 though.

6 Q. No. My question is -- let me
7 rephrase my question. My question is, if a
8 customs officer were to testify that they, at
9 their location at the airport, targeted
10 Nigerian passengers, you would say that that
11 customs officer's testimony is incorrect?

12 A. In the context that you just said,
13 yes, I would say that is incorrect.

14 Q. But you do not work at the
15 airport; do you?

16 A. Not anymore. That is within my
17 area of responsibility, but I am not assigned
18 at the airport.

19 Q. So even as the director of field
20 operations, if a customs officer who actually
21 works at the airport were to say that they
22 targeted Nigerians, Nigerian passengers, you
23 would dispute that?

24 A. I would think that that was not a
25 good law enforcement tool, and I don't think

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2 that that's appropriate.

3 Q. Well, it is not whether it is
4 appropriate but whether you are going to say
5 that that officer is not telling the truth?

6 A. I don't know what's making him say
7 that, so it is hard for me to assess the
8 truthfulness of his statement.

9 Q. In other words, you are not in a
10 position to say one way or the other what is
11 actually going on at the airports except what
12 somebody reports to you. Correct?

13 A. That's correct.

14 MR. OKOLI: All right. That would
15 be it.

16 MR. CLOPPER: Great. Let us take
17 a five-minute break. I may have
18 follow-up questions and it would be just
19 a couple, if any.

20 MR. OKOLI: Okay.

21 (Whereupon, a short recess was
22 taken.)

23 MR. CLOPPER: I will ask two
24 questions.

25 MR. OKOLI: Sure.